

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RIDE THE DUCKS SEATTLE, LLC,

Plaintiff,

v.

RIDE THE DUCKS INTERNATIONAL, LLC;
CHRIS HERSCEND AND JANE DOE
HERSCEND, individually and on behalf of
their marital community; and HERSCEND
FAMILY ENTERTAINMENT
CORPORATION,

Defendants and Cross- Plaintiffs.

NO. 2:19-cv-01408-MJP

STIPULATED PETITION AND
PROTECTIVE ORDER

**NOTE ON MOTION CALENDAR:
FEBRUARY 20, 2020**

RIDE THE DUCKS INTERNATIONAL, LLC,
et al.

Plaintiffs,

v.

BRIAN TRACEY, et al.

Defendants.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties, through their undersigned counsel of record, hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged: (a) information prohibited from disclosure by statute; (b) information that reveals trade secrets; (c) research, technical, commercial or financial information that the party has maintained as confidential; (d) medical information concerning any individual; (e) personal identity information; (f) income tax returns, W-2 forms and 1099 forms; or (g) personnel or employment records of a person who is not a party to the case.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain and/or is publicly accessible or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless all parties
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for
18 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
19 A);

20 (d) the court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication
22 of confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately
24 return all originals and copies of any confidential material;

1 (f) witnesses in the action to whom disclosure is reasonably necessary, unless
2 otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition
3 testimony or exhibits to depositions that reveal confidential material must be separately bound
4 by the court reporter and may not be disclosed to anyone except as permitted under this
5 agreement;

6 (g) the author or recipient of a document containing the information or a
7 custodian or other person who otherwise possessed or knew the information.

8 4.3 Filing Confidential Material. Before filing confidential material or discussing
9 such material in court filings, the filing party shall confer with the designating party, in
10 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
11 remove the confidential designation, whether the document can be redacted, or whether a motion
12 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
13 designating party must identify the basis for sealing the specific confidential information at issue,
14 and the filing party shall include this basis in its motion to seal, along with any objection to
15 sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be
16 followed and the standards that will be applied when a party seeks permission from the court to
17 file material under seal. A party who seeks to maintain the confidentiality of its information
18 must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the
19 motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied,
20 in accordance with the strong presumption of public access to the Court's files.

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
23 that designates information or items for protection under this agreement must take care to limit
24 any such designation to specific material that qualifies under the appropriate standards. The
25 designating party must designate for protection only those parts of material, documents, items,

1 or oral or written communications that qualify, so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept unjustifiably
3 within the ambit of this agreement. Over designation of material as confidential will waste
4 resources of the parties.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
7 unnecessarily encumber or delay the case development process or to impose unnecessary
8 expenses and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated
10 for protection do not qualify for protection, the designating party must promptly notify all other
11 parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (*e.g.*, paper or electronic documents
17 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
19 contains confidential material. If only a portion or portions of the material on a page qualifies
20 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
21 making appropriate markings in the margins).

22 (b) Testimony given in deposition or in other pretrial proceedings: the parties
23 and any participating non-parties must identify on the record, during the deposition or other
24 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
25 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after

1 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
2 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
3 confidential information at trial, the issue should be addressed during the pre-trial conference.

4 (c) Other tangible items: the producing party must affix in a prominent place
5 on the exterior of the container or containers in which the information or item is stored the word
6 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
7 the producing party, to the extent practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party’s
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
12 in accordance with the provisions of this agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
21 regarding confidential designations without court involvement. Any motion regarding
22 confidential designations or for a protective order must include a certification, in the motion or
23 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
24 conference with other affected parties in an effort to resolve the dispute without court action.
25 The certification must list the date, manner, and participants to the conference. A good faith

1 effort to confer requires a face-to-face meeting, a telephone conference, or a sufficient email
2 exchange.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
7 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
8 other parties) may expose the challenging party to sanctions. All parties shall continue to
9 maintain the material in question as confidential until the court rules on the challenge.

10 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
11 LITIGATION

12 If a party is served with a subpoena or a court order issued in other litigation that compels
13 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
14 party must:

15 (a) promptly notify the designating party in writing and include a copy of the
16 subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or order to
18 issue in the other litigation that some or all of the material covered by the subpoena or order is
19 subject to this agreement. Such notification shall include a copy of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be pursued
21 by the designating party whose confidential material may be affected.

22 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
24 material to any person or in any circumstance not authorized under this agreement, the receiving
25 party must immediately (a) notify in writing the designating party of the unauthorized

1 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
2 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
3 of this agreement, and (d) request that such person or persons execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
6 MATERIAL

7 When a producing party gives notice to receiving parties that certain inadvertently
8 produced material is subject to a claim of privilege or other protection, the obligations of the
9 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
10 provision is not intended to modify whatever procedure may be established in an e-discovery
11 order or agreement that provides for production without prior privilege review. The parties agree
12 to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

13 10. NON TERMINATION AND RETURN OF DOCUMENTS

14 Within 60 days after the termination of this action, including all appeals, each receiving
15 party must return all confidential material to the producing party, including all copies, extracts
16 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
17 destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
19 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
20 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
21 work product, even if such materials contain confidential material.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 PATTERSON BUCHANAN FOBES &
4 LEITCH, INC., P.S.

WILLIAMS KASTNER & GIBBS PLLC

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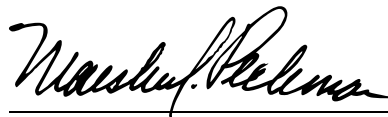
11 Attorneys for Plaintiff and Cross-Claim
12 Defendants

Attorneys for Defendants and Cross-Claim
Plaintiffs

13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED

15 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
16 any documents in this proceeding shall not, for the purposes of this proceeding or any other
17 federal or state proceeding, constitute a waiver by the producing party of any privilege applicable
18 to those documents, including the attorney-client privilege, attorney work-product protection, or
19 any other privilege or protection recognized by law.
20

21 DATED: February 20, 2020

22
23 

24 Marsha J. Pechman

25 United States Senior District Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Western District of Washington on
7 _____ [date] in the case of ***RIDE THE DUCKS SEATTLE, LLC v.***
8 ***RIDE THE DUCKS INTERNATIONAL, LLC; CHRIS HERSCEND AND JANE DOE***
9 ***HERSCEND, individually and on behalf of their marital community; and HERSCEND***
10 ***FAMILY ENTERTAINMENT CORPORATION, CASE NO. 2:19-cv-01408-MJP.*** I agree to
11 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
12 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
13 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
14 item that is subject to this Stipulated Protective Order to any person or entity except in strict
15 compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for the
17 Western District of Washington for the purpose of enforcing the terms of this Stipulated
18 Protective Order, even if such enforcement proceedings occur after termination of this action.

19 Date: _____

20 City and State where sworn and signed: _____

21 Printed name: _____

22 Signature: _____